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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: P. Gardner et al. )  
Serial No: 10/815,408 ) Attorney  
Filed: April 1, 2004 ) Docket No: 02-014-01(IDRF118)  
Title: Infant Holder ) Group Art Unit: 3636  
 ) Examiner: Joseph F. Edell  
 ) Confirmation No.: 7986  
 )

**APPELLANTS/APPLICANTS' OPENING BRIEF ON APPEAL**

**1. REAL PARTY IN INTEREST.**

The Idaho Research Foundation, Inc. owns this patent application.

**2. RELATED APPEALS AND INTERFERENCES.**

There are no other appeals or interferences known to Appellants, Appellants' legal representative or the Assignee which will affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**3. STATUS OF CLAIMS.**

Claims 1-11 are pending. All pending claims have been rejected. The rejection of all pending claims is appealed.

**4. STATUS OF AMENDMENTS.**

No amendments were filed after the final action.

Serial No. 10/815,408  
Attorney Docket No. 02-014-01 (idrf118)  
Appellants' Opening Brief

## 5. SUMMARY OF CLAIMED SUBJECT MATTER.

The claims are directed to an infant holder that may be used for circumcision and other medical procedures that helps an infant to lie in a natural, comfortable position with legs flexed at the hips and knees and rotated at the hips, while still allowing the doctor good access to the infant's groin area. (Specification, paragraph [0007].)

Claim 1, for example, is directed to an infant holder that includes a body (body 12 in Figs. 1-7) having a recess therein configured to support an infant's torso and legs (recesses 14 and 16 in Figs. 1-7) such that the thighs extend out from the torso at an angle in the range of 70°-120° (hip bend angle 31 in Fig. 3; Specification, paragraph [0010]) and incline relative to the torso at an angle in the range of 20°-50° (hip bend angle 33 in Fig. 6; Specification, paragraph [0010]).

Claim 6, for example, is directed to an infant holder that includes a first portion for supporting an infant's torso (torso recess 14 in Figs. 1-7) and second recessed portions for supporting the infant's legs (leg recesses 16 in Figs. 1-7). The second portions adjoin the first portion. The second portions are positioned opposite one another on either side of the first portion. (As best seen in Figs. 1, 3, 6 and 7.) Each second portion extends away from the first portion at an angle in the range of 70°-120° (hip bend angle 31 in Fig. 3; Specification, paragraph [0010]) and inclines relative to the first portion at an angle in the range of 20°-50° (hip bend angle 33 in Fig. 6; Specification, paragraph [0010]).

Claim 10, for example, is directed to an infant holder that includes a body having a torso recess characterized by a base and sidewalls configured generally to support an infant's torso (torso recess 14, base 18 and sidewalls 20 in Figs. 1-7) and leg recesses characterized by a base and sidewalls configured generally to support the infant's legs (leg recesses 16, base 22 and sidewalls 24 in Figs. 1-7). The base of the torso recess inclines at an angle in the range of 5°-20° from a lower portion to an upper portion (incline angle 29 in Fig. 5; Specification, paragraph [0009]). The leg recesses are positioned opposite one another on either side of the lower portion of the torso recess. (As best seen in Figs. 1, 3, 6 and 7.) Each leg recess includes a thigh portion (upper/thigh portion 30 in Figs. 1, 5, 6 and 7) and a calf portion extending away from the thigh portion (lower/calf portion 34 in Figs. 1, 5, 6 and 7).

The thigh portion of each leg recess extends away from the torso recess such that a centerline of the base of the thigh portion intersects a longitudinal axis extending lengthwise along the torso recess at an angle in the range of 70°-120° (hip bend angle 31 in Fig. 3; Specification, paragraph [0010]) and inclines relative to the base of the torso recess at an angle in the range of 20°-50° (hip bend angle 33 in Fig. 6; Specification, paragraph [0010]).

#### **6. GROUNDS OF REJECTION TO BE REVIEWED.**

1. Are the depressions formed in Bowman's torso pad from the weight of an infant laying on pad and/or the lower support block a recess configured to support an infant's torso and legs? Ground No. 1 applies to Claims 1-5.
2. Does the combination of the depressions in Bowman's torso pad and the recesses in Powell's surgical table include leg recesses extending away from a torso recess at a 70°-120° angle and inclining relative to the torso recess at a 20°-50° angle? Ground No. 2 applies to Claims 5-11.
3. Does the combination of the depressions in Bowman's torso pad and the recesses in Powell's surgical table include a torso recess inclining at a 5°-20° angle? Ground No. 3 applies to Claims 7 and 9-11.

#### **7. ARGUMENT.**

##### **GROUND NO. 1**

**The depressions formed in Bowman's torso pad from the weight of an infant laying on the pad and/or the lower support block are not a recess configured to support an infant's torso and legs. (Ground No. 1 applies to Claims 1-5.)**

Claims 1-4 were rejected under Section 102 as being anticipated by Bowman (5329934). Claim 5 was rejected under Section 103 as being obvious over Bowman in-view-of-Powell (2700381). The rejections are all based on the assertion that the depressions formed in Bowman's torso pad 40 from the weight of an infant laying on pad 40 and/or the lower support block 50 constitute a recess configured to support an infant's torso and legs. This assertion is not correct.

Claim 1 recites an infant holder that includes a body having a recess therein configured to support an infant's torso and legs such that the thighs extend out from

the torso at an angle in the range of 70°-120° and incline relative to the torso at an angle in the range of 20°-50°. Bowman shows an infant laying on a soft flat pad. It is clear from Figs. 3 and 6 in Bowman that torso pad 40 has no recess. Pad 40 is flat.

Even if it is assumed that the depressions formed in torso pad 40 from the weight of an infant laying on pad 40 might somehow be deemed the claimed recess, any such "recess" is not configured to support the infant's legs generally, and specifically not within the range of angles claimed. Indeed, there is no apparent leg support at all in the restraint device disclosed in Bowman. Fig. 2 in Bowman shows the legs suspended over torso pad 40 and fabric casing 21. "Lower torso support block 50" in Bowman is not configured to nor does it support the infant's legs. Bowman Figs. 1 and 2 show lower torso support block 50 in contact with the infant's buttocks, as one would expect from a lower *torso* support block. The Examiner's assertion at page 5 of the final Action that "support block 50 actually contacts the infant's legs" is not consistent with Bowman Figs. 1 and 2.

So far as is relevant to the claimed invention, Bowman stands for the unremarkable proposition that if you lay an infant on its back on a flat surface, the legs will stick out from the torso in the manner shown in Bowman Fig. 2. Indeed, the claimed infant holder takes advantage of this fact by providing features that support the infant in this natural position, specifically including the infant's legs, as noted in paragraph [0007] of the Specification. When the infant is *supported* in this natural position, the infant may be immobilized in this natural position. In Bowman, by contrast, the infant is not supported in this natural position. Hence, to immobilize the infant in the restraint device shown in Bowman, the infant's legs must be strapped down flat against pad 40.

Bowman does not teach all of the limitations of Claim 1 as required to support the Section 102 rejection. For these same reasons, the combination of Bowman and Powell does not teach or suggest all of the limitations of Claim 5, which depends from Claim 1.

## GROUND NO. 2

**The combination of the depressions in Bowman's torso pad and the recesses in Powell's surgical table do not include leg recesses extending away from a torso recess at a 70°-120° angle and inclining relative to the torso recess at a 20°-50° angle. (Ground No. 2 applies to Claims 5-11.)**

Claims 5-11 were rejected under Section 103 as being obvious over Bowman in view of Powell. The Examiner asserts that Bowman teaches the claimed configurations except for plural recesses taught generally by Powell. The Appellants acknowledge that recessed infant holders were known in the art -- the Circumstaint™ infant holder mentioned in the Background section of the application is one such holder. The recesses in the Circumstaint™ infant holder and in Powell's surgical table, however, do not have the configuration recited in any of Claims 5-11. And, for the reasons noted above under Ground No. 1, neither does Bowman.

Specifically with regard to Claim 5, Bowman does not teach or suggest all of the limitations of the base claim as noted in the discussion above for Claim 1.

Specifically with regard to Claims 6 and 10, Bowman does not teach or suggest recessed portions or recesses (or any other feature) for supporting an infant's legs extending and inclining at the claimed range of angles. Powell also does disclose leg recesses extending away from the torso recess at an angle in the range of 70°-120° and inclining relative to the torso recess at an angle in the range of 20°-50°. Powell's leg recesses are not inclined at all and they extend away from the torso recess at an angle less than 45°.

## GROUND NO. 3

**The combination of the depressions in Bowman's torso pad and the recesses in Powell's surgical table do not include a torso recess inclining at a 5°-20° angle. (Ground No. 3 applies to Claims 7 and 9-11)**

Claim 7 recites that the first portion for supporting an infant's torso inclines relative to horizontal at an angle in the range of 5°-20°. Claim 10 recites the base of the torso recess inclining at an angle in the range of 5°-20° from a lower portion to an upper portion.

Bowman does not teach or suggest an inclining torso support as claimed. The elevation section view in Bowman Fig. 2 shows that pad 40 and fabric casing 21 are horizontal. That is to say, the torso support in Bowman is not inclined relative to horizontal or from one portion to another portion. To the extent the Examiner is suggesting that the undulating top surface of pad 40 somehow meets the limitations of Claims 7 and 10, the Appellants note that the structural feature supporting the infant's torso in Bowman is pad 40 on fabric casing 21, which is horizontal. Any incremental length of the undulating surface of pad 40 that might pass through the claimed range of angle of inclination cannot reasonably be deemed "a first portion (of the infant holder) for supporting an infant's torso." Powell also does disclose an inclining torso support. Powell's torso support (body receiving cavity 2) is not inclined.

Respectfully submitted,

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## APPENDIX I -- CLAIMS INVOLVED IN THE APPEAL

1       1. An infant holder, comprising a body having a recess therein configured  
2 to support an infant's torso and legs such that the thighs extend out from the torso at  
3 an angle in the range of 70°-120° and incline relative to the torso at an angle in the  
4 range of 20°-50°.

1       2. The holder of Claim 1, wherein the recess is configured to support the  
2 infant's torso and legs such that the thighs extend out from the torso at an angle of  
3 about 90° and incline relative to the torso at an angle of about 30°.

1       3. The holder of Claim 1, wherein the recess is configured to support the  
2 infant's legs such that the calves extend out from the thighs at an angle of about 90°.

1       4. The holder of Claim 1, wherein the recess is configured to support the  
2 infant's legs such that the calves extend out from the thighs at an angle of about 90°  
3 and decline relative to the thighs at an angle of about 10°.

1       5. The holder of Claim 1, wherein the recess comprises a first recess  
2 configured to support the infant's torso and second recesses adjoining the first  
3 recess, the second recesses configured to support the infant's legs.

1       6. An infant holder, comprising:  
2       a first portion for supporting an infant's torso; and  
3       second recessed portions for supporting the infant's legs, the second portions  
4       adjoining the first portion and the second portions positioned opposite one another  
5       on either side of the first portion, each second portion extending away from the first  
6       portion at an angle in the range of 70°-120° and inclining relative to the first portion  
7       at an angle in the range of 20°-50°.

1       7. The holder of Claim 6, wherein the first portion inclines relative to  
2 horizontal at an angle in the range of 5°-20°.

1       8.     The holder of Claim 6, wherein each second portion extends away  
2 from the first portion at an angle of about 90° and inclines relative to the first portion  
3 at an angle of about 30°.

1       9.     The holder of Claim 7, wherein each second portion extends away  
2 from the first portion at an angle of about 90° and inclines relative to the first portion  
3 at an angle of about 30° and the second portion inclines relative to horizontal at an  
4 angle of about 10°.

1       10.    An infant holder, comprising:  
2            a body having a first torso recess characterized by a base and sidewalls  
3 configured generally to support an infant's torso and second leg recesses  
4 characterized by a base and sidewalls configured generally to support the infant's  
5 legs;  
6            the base of the torso recess inclining at an angle in the range of 5°-20° from a  
7 lower portion to an upper portion;  
8            the leg recesses positioned opposite one another on either side of the lower  
9 portion of the torso recess and each leg recess comprising a first thigh portion and a  
10 second calf portion extending away from the thigh portion; and  
11           the thigh portion of each leg recess extending away from the torso recess  
12 such that a centerline of the base of the thigh portion intersects a longitudinal axis  
13 extending lengthwise along the torso recess at an angle in the range of 70°-120° and  
14 inclines relative to the base of the torso recess at an angle in the range of 20°-50°.

1       11.    The holder of Claim 10, wherein:  
2            the base of the torso recess inclines at an angle of about 10° from the lower  
3 portion to the upper portion;  
4            the thigh portion of each leg recess extends away from the torso recess such  
5 that the centerline of the base of the thigh portion intersects the longitudinal axis  
6 extending lengthwise along the torso recess at an angle of about 90° and inclines  
7 relative to the base of the torso recess at an angle of about 30°; and  
8            the calf portion of each leg recess extends away from the thigh portion such  
9 that a centerline of the base of the calf portion intersects the centerline of the base

10 of the thigh portion at an angle of about 90° and declines relative to the base of the  
11 thigh portion at an angle of about 10°.

**APPENDIX II -- EVIDENCE SUBMITTED UNDER RULES 130, 131 OR 132**

none

**APPENDIX III -- RELATED PROCEEDINGS**

none